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**SEP 10 2009**

**OFFICE OF PETITIONS**

In re Application of	:	
Miller et al.	:	
Application No. 10/726,268	:	DECISION ON PETITIONS
Filed: 12/02/2003	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 03-40216-US	:	

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed June 26, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i)<sup>1</sup> of the prior-filed application, unless previously submitted;

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<sup>1</sup> The Office notes that the claim under 35 U.S.C. 119(e) for the benefit of the prior-filed provisional application, set forth in the amendment submitted on petition, incorrectly references the filing date of the prior-filed application as September 4, 2002, instead of September 6, 2002. (See accompanying filing receipt and Bib Data Sheet for Application No. 60/408,606). Pursuant to 37 CFR 1.78(a)(5)(i): "Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior-filed provisional application, identifying it by the provisional application number (consisting of series code and serial number)." Applicants may wish to file an amendment to the first line of the specification, correcting the filing date of the prior-filed provisional

- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

As all the above requirements having been satisfied, the late claim for benefit of priority under 35 U.S.C. §§ 120 and 119(e) is accepted as being unintentionally delayed.

*The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR §§ 1.78(a)(1) and (a)(2) and under 35 U.S.C. § 119(e) and 37 CFR §§ 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.*

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

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application. As a benefit claim pursuant to 37 CFR 1.78(a)(5) does not require identification of the filing date of an application filed under 35 U.S.C. 111, no renewed petition under 37 CFR 1.78 nor any additional surcharge is required to effectuate this correction.

This application is being forwarded to Technology Center Art Unit 3623 for consideration by the examiner of the claim under 35 U.S.C. §§ 120 and 119(e) of the prior-filed nonprovisional and provisional applications.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions

**Enclosures:** Corrected Filing Receipts (10/726,268 and 60/408,606) and Bib Data Sheet (60/408,606)



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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	TOT CLAIMS	IND CLAIMS
10/726,268	12/02/2003	3623	703	03-40216-US	31	3

CONFIRMATION NO. 3359

CORRECTED FILING RECEIPT

26345  
GIBBONS P.C.  
ONE GATEWAY CENTER  
NEWARK, NJ 07102



OC000000037707068

Date Mailed: 09/09/2009

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

**Applicant(s)**

Greg Miller, Asbury, NJ;  
Kevin McMurtry, Basking Ridge, NJ;  
Jeffrey Brady, Jersey City, NJ;

**Power of Attorney:** The patent practitioners associated with Customer Number 26345

**Domestic Priority data as claimed by applicant**

This application is a CIP of 10/440,521 05/16/2003  
which claims benefit of 60/408,066 09/04/2002

**Foreign Applications**

**If Required, Foreign Filing License Granted:** 03/05/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/726,268**

**Projected Publication Date:** Not Applicable

**Non-Publication Request:** No

**Early Publication Request:** No

**\*\* SMALL ENTITY \*\***

**Title**

System and method for a planner

**Preliminary Class**

705

**PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES**

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

**LICENSE FOR FOREIGN FILING UNDER**

**Title 35, United States Code, Section 184**

**Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

#### **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).



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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	TOT CLAIMS	IND CLAIMS
60/408,606	09/06/2002		160	3123-513-prov		

**CONFIRMATION NO. 3259**

## CORRECTED FILING RECEIPT



\*OC000000037707104\*

David M. Sigmond  
Maxtor Corporation  
2452 Clover Basin Drive, B133  
Longmont, CO 80503

Date Mailed: 09/08/2009

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

### Applicant(s)

James Alexander, Boulder, CO;  
David McMurtrey, Loveland, CO;  
Richard LeSage, Longmont, CO;  
Jason Laks, Boulder, CO;

### Power of Attorney:

David Sigmond--34013

### If Required, Foreign Filing License Granted: 09/24/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 60/408,606**

**Projected Publication Date:** None, application is not eligible for pre-grant publication

**Non-Publication Request:** No

**Early Publication Request:** No

**Title**

Method for reducing runout using clock head playback during servo writing

## PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

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Bib Data Sheet

CONFIRMATION NO. 3259

<b>SERIAL NUMBER</b> 60/408,606	<b>FILING OR 371(c) DATE</b> 09/06/2002 <b>RULE</b>	<b>CLASS</b>	<b>GROUP ART UNIT</b>	<b>ATTORNEY DOCKET NO.</b> 3123-513-prov
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## APPLICANTS

James Alexander, Boulder, CO;  
 David McMurtrey, Loveland, CO;  
 Richard LeSage, Longmont, CO;  
 Jason Laks, Boulder, CO;

\*\* CONTINUING DATA \*\*\*\*\*

\*\* FOREIGN APPLICATIONS \*\*\*\*\*

IF REQUIRED, FOREIGN FILING LICENSE GRANTED

\*\* 09/24/2002

Foreign Priority claimed <input type="checkbox"/> yes <input type="checkbox"/> no	<b>STATE OR COUNTRY</b> CO	<b>SHEETS DRAWING</b> 1	<b>TOTAL CLAIMS</b>	<b>INDEPENDENT CLAIMS</b>
35 USC 119 (a-d) conditions met <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Met after Allowance				
Verified and Acknowledged	Examiner's Signature	Initials		

## ADDRESS

David M. Sigmond  
 Maxtor Corporation  
 2452 Clover Basin Drive, B133  
 Longmont, CO80503

## TITLE

Method for reducing runout using clock head playback during servo writing

<b>FILING FEE RECEIVED</b> 160	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees ( Filing ) <input type="checkbox"/> 1.17 Fees ( Processing Ext. of time ) <input type="checkbox"/> 1.18 Fees ( Issue ) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit
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